

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 10-1549

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., December 13, 2010, on the application of **STEVEN A. and JANET M. PLEWES** ("Applicants"). The Applicants are requesting seven variances of the 100-foot Shoreline Development Buffer to expand their home both vertically and horizontally as follows: (1) expand the existing front entry and second floor above with a new covered porch and steps to be located 94'2" from Mean High Water (MHW); (2) convert the existing garage to living space by raising the roof by approximately 36" to be located 70'3" from MHW; (3) construct a chimney and fireplace to be located 81'2" from MHW; (4) expand the second floor above the garage located 72'8" from MHW; (5) expand the existing second floor bedroom located 73'7" from MHW; (6) construction of a pervious deck to be located 64'2" from MHW; and (7) relocate an existing HVAC pad to be 86'10" from MHW and construct two new HVAC pads to be located 76'3" from MHW. At its closest point the existing home is 63'8" from MHW. The Applicants propose to raise the roof by 4'9" to 31'6" at the highest point. The property is located at 24019 Porters Creek Lane, St. Michaels, Maryland 21663 and is in the Rural Residential (RR) zone. It is owned by the Applicants. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-139; Article VIII, §190-169; and Article IX, §190-182 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Betty Crothers, John Sewell, and Margaret Young. The Applicants were present and represented by Carmen L. Farmer, Esquire, and Bruce C. Armistead, Esquire, Armistead, Griswold, Lee & Rust, P.A., 114 Bay Street, Building C, Easton, Maryland 21601. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for variances with Attachment A.
2. Copy of portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of critical area variance standards from the Code with the Applicants' written response to each applicable requirement.
7. Staff Memo dated November 9, 2010.
8. Sign Maintenance Agreement.
9. Site Plan prepared by East Bay Construction Service, LLC.
10. Floor Plans and Elevations prepared by East Bay Construction Service, LLC.
11. Color photographs of existing residence (four pages).
12. Critical Area Commission comments in letter dated November 29, 2010.
13. Authorization Letter, dated September 29, 2010.
14. Independent Procedure Disclosure & Acknowledgement Form.
15. Aerial photograph.
16. Deck Agreement, dated November 15, 2010.
17. Letters of support from adjacent property owners, Larry Epstein, John and Nancy Hargrove, Richard and Kelly Hargrove, Peter and Carolyn Houch, James and Rita Devine, John Mautz, and James McConnell.

In her opening statement Ms. Farmer outlined the Applicants' variance requests. Although numerous, they would result in only a modest expansion of their existing home. A total of 349 square

feet of gross floor area would be added. The proposed expansion would not take the home any closer to MHW. Lot coverage in the Critical Area buffer would be reduced.

The first witness was Lars Erickson, East Bay Construction Services, LLC, P.O. Box 35, Newcomb, Maryland 21653. He assisted the Applicants with their expansion plans. He said that a prior owner of the property constructed a 570 square foot addition to the house in 1993.

Mr. Erickson said that the existing house is almost completely within the 100-foot shoreline buffer. There is a small point of the house outside of the buffer not constricted by the SDA on the property. He confirmed that the proposed expansion of the house will result in a net decrease in lot coverage in the buffer.

He summarized the proposed expansion plans into four areas. The first related to a modest change to the entry area. The proposal would only add about 4.6 square feet of impervious surface as most of the area is already impervious.

The second area relates to the conversion of the existing garage area to living space. Because the plans provide for removal of existing impervious surface areas the renovations will result in a net decrease of about 69 square feet of impervious surface.

The third area consists of the expansion of the second floor of the existing structure. All of the second floor expansion will be within the footprint of the existing home. It includes a new fourth bedroom and expansion of a dormer from an existing bedroom. This will allow for a hallway for access to the new fourth bedroom. The roof over the expanded second floor will grow to 31'6".

The fourth area of renovations relate to the decking and patio areas on the water side of the home. The existing brick patio will be removed. The existing 10'x10' deck will be expanded with a 10'x10' addition. The entire deck will be pervious and not count for lot coverage. The resulting renovations in this area will cause a net gain of about 336 square feet of pervious area in the buffer on the side of the home closest to the waterfront.

The expansion plans also provide for the removal of an existing second floor deck. The expansion plans will result in a net reduction of about 410 square feet of lot coverage within the shoreline buffer.

The next witness was Steven Plewes. He testified that he and his wife have been married for 32 years. They currently live in Montgomery County, Maryland and they are looking forward to moving to their home in Talbot County. They have three children, all in their twenties, and are anticipating grandchildren. They want to have room for their children and anticipated grandchildren in their Talbot County home. He has plans to relocate his business to Talbot County when his wife retires.

Mrs. Plewes advised the Board that she is a certified public accountant in the Montgomery County area and she plans to retire in the near future. She may open a small accounting practice in Talbot County after they relocate here permanently.

Mr. Plewes advised that he had met with all of their neighbors and they have all encouraged their expansion plans.

Ms. Farmer then summarized the expansion plans in connection with the variance requirements. Mrs. Plewes confirmed that when they purchased the property in 2008 it was in its present configuration. Ms. Farmer said that the Applicants will comply with all Talbot County stormwater management requirements.

No one appeared in opposition to the application.

The Board then considered the application. After some discussion the Board, upon motion, duly made and seconded, approved the variances by a vote of 5 to 0. The approval included the conditions suggested by the County staff. The Board made the following findings:

1. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship. The house is located almost entirely within the 100-foot shoreline development

buffer. Any expansion potential for the house is further limited by the SDA setback and driveway on the side opposite the shoreline. A literal enforcement of the limitations would not allow the Applicants the opportunity of a modest expansion of their existing home and would result in an unwarranted hardship.

2. A literal interpretation of the Critical Area requirements of the ordinance will deprive the property owners of rights commonly enjoyed by other property owners in the same zoning district. The Applicants have proposed a modest expansion of their home, primarily through vertical expansion and a resulting reduction of the impervious surface in the shoreline buffer. They cannot expand their home consistent with existing setbacks in any logical manner without the requested variances. Their proposed expansion will not place structures any closer to the shoreline.
3. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zone.
4. The variance request is not based on conditions or circumstances which are the result of actions by the applicants, including the commencement of development activity before an application for variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property. The Applicants purchased their home as it currently exists and did not construct the home in the buffer. The request is based on the fact that the home was legally constructed in the shoreline buffer area of the property that is now subject to the Critical Area restrictions that encompass much of the formerly buildable area of the lot and substantially all of the existing home. Their ability to expand away from the

shoreline is restricted because of required setbacks from the SDA and their existing driveway.

5. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the ordinance. Most of the areas proposed to be disturbed are currently improved by portions of the existing structure. Impervious surface within the buffer will be reduced by the proposed expansion plans, a goal in harmony with the aforementioned provisions.
6. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship. None of the proposed improvements will be closer to the shoreline and most of the proposed improvements will be over the existing building footprint.
7. To the extent the lot may be a legal nonconforming lot the nonconformity cannot be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership. The Applicants do not own any adjacent lots that could be combined with their lot.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

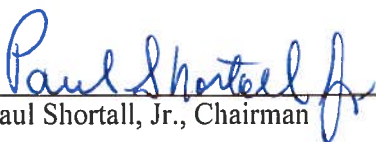
RESOLVED, that the Applicants, **STEVEN A. and JANET M. PLEWES** (Appeal No. 10-1549) are **GRANTED** the requested variances consistent with the evidence presented to the Board of Appeals. The variance is subject to the following conditions:

1. The Applicants shall make applications to and follow all of the rules, procedures, and construction timelines as outlined by the Department of Permits and Inspections regarding new construction.
2. The Applicants shall remove the 20' pier located on their property.
3. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals approval.
4. Natural vegetation of an area three times the extent of the proposed disturbance allowed shall be created in the buffer.
5. A Buffer Management Plan may be required which shall provide for the aforementioned mitigation in accordance with State and County laws and regulations. The management plan must be approved by Talbot County before a building permit is issued to the Applicants.

The variances granted by this decision will lapse and become null and void eighteen months following the date of this decision, unless, prior to the expiration date, construction is commenced and diligently pursued toward completion.

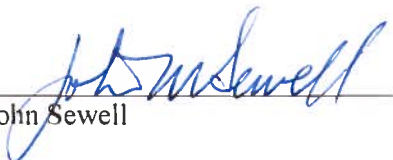
GIVEN OVER OUR HANDS, this 7<sup>th</sup> day of January, 2011.


**TALBOT COUNTY BOARD OF APPEALS**

  
Paul Shortall, Jr., Chairman

  
Philip Jones, Vice Chairman

  
Betty Crothers

  
John Sewell

  
Margaret Young